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## Conyers v. Bush: Administration Response Legally and Factually Flawed

Yesterday, the Justice Department sought to dismiss *Conyers v. Bush*, a historic lawsuit brought by 12 Ranking members of the House of Representatives, to stop the unlawful Deficit Reduction Act of 2006 from going into effect.

The members filed suit in April, when it came to light that the Deficit Reduction Act signed into law by the President, never actually passed the House of Representatives. The suit argued that the Constitution's bicameral clause, in no uncertain terms, requires that identical legislation pass both houses of Congress before it becomes law. It sought to enjoin the entire act and stop billions in cuts to America's core social programs.

"I am deeply concerned by the Administration's arguments. If accepted by the court, the Administration and the Majority in Congress can collude to sign final laws that were never voted on by members," House Judiciary Committee Ranking Member John Conyers, Jr. said.

"The Republican Leadership in Washington has shown an unprecedented hostility for the traditions, rules and laws that have guided our democracy for over two hundred years," said Rules Committee Ranking Member Louise Slaughter. "This motion to dismiss represents their latest effort in a long campaign to prevent or eliminate any source of accountability over the Republican leadership in Congress or the White House."

Homeland Security Ranking Member Bennie Thompson added, "I am not persuaded by the arguments raised in the Government's motion to dismiss. None of the arguments go to the crux of the matter which is that the president signed into law a bill that did not pass both houses of Congress. Absent from its motion is any argument that his actions were within the bounds of the law."

The Bush Administration's motion included the following questionable assertions:

- The Administration argues that only "personal" injury to Members supports standing; in reality, however, the relevant Supreme Court case *Raines v. Byrd* held that Members could have standing in the case of "vote nullification."
- The Administration argues that under *Field v. Clark* (1890), attestation by the Speaker and President pro tempore of the Senate is "complete and unimpeachable." However, that case specifically did not consider the more "remote" possibility that the "clerks of the presiding officers ... and the clerks of the two houses" were party to a false certification, yet that is what appears to have happened in this case. The Administration also ignores more than 100 years of Supreme Court precedent that the Bicameral Clause is absolute, such as the *Chadha* case in 1983.
- The Administration also inconsistently argues that for legislators to have standing they must possess the votes sufficient to have defeated the measure. Yet even under the Administration's own standard, we cannot know if the votes existed to defeat the measure, which only passed by a 216-214 margin, as the issue was never presented to the House.
- The Administration also argues that we brought legal action against the Executive Branch even though the responsible party was the Legislative Branch. However, the Administration ignores the fact that they are the only ones in a position to enjoin the implementation of this unlawful budget measure.
- The Administration next argues that when the House concurred in the Senate Amendment, we accepted the "correct" version of the law. However, at that point the House would have been concurring in the 36 month provision for payments for durable medical equipment, not the 13 month provision that was in the ultimate provision sent to the Senate.
- Finally, the Administration argues that if all else fails and the court agrees that different legislation unlawfully passed both Houses, that the Court should simply exercise its power to "sever" the offending clause. This is a truly astounding statement that totally misunderstands the legislative process in general and the budget process in particular. You cannot simply pick and choose provisions when dealing with a budget bill, the entire point of the process is to develop a law that sets overall budget dollar allocations. If one part falls out, by necessity other provisions may be impacted.

The Administration argued in its dismissal motion that it was permissible to take different pieces from different bills approved in the past by only one house to create a new document for the President to sign. "First it was ignoring

the Geneva Conventions," said Conyers. "Then it was the abuse of Presidential signing statements. Now our government is arguing that it can pick and choose which laws to ultimately enact, regardless of clear Constitutional procedures requiring bicameralism before presentment to the President," said Conyers.

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